

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 224

March 19, 2013

SUMMARY OF BILL: Prohibits store owners and store clerks from knowingly using or accepting cash assistance funds held on electronic bank transfers (EBT) cards or using EBT cards through access devices for the sale or purchase of specified services or products or in specified establishments including alcoholic beverages, firearms, jewelry, vacation services, and adult cabarets. A store owner who knowingly allows a prohibited EBT transaction is subject to a civil penalty of no more than \$500 for the first violation, no more than \$2,500 for the second violation, and no more than \$4,000 for a third or subsequent violation. The store owner will also be referred to the appropriate state regulatory authority for possible disciplinary action. Store owners that receive payment for items purchased in the store by or through direct cash assistance funds held on EBT cards or access devices are required to ensure that each employee successfully completes a training program within 30 days of employment and receives a certificate of completion from the program. The employer or employee will pay the cost of the training program. The store owner is required to provide the names of certified employees to the Department of Human Services (the Department).

Owners of establishments where the primary business is the sale of firearms or alcoholic beverages and owners of adult-oriented establishments are required to post signs at each automated teller machine (ATM) or point of sale terminal located on the premises stating that the ATM or point of sale terminal cannot be used to receive cash assistance benefits. An owner of an establishment that does not post required signs or an individual who knowingly accesses cash assistance benefits where signs are posted commits a Class C misdemeanor.

Recipients of direct cash assistance are prohibited from knowingly making a prohibited purchase. A recipient that knowingly makes a prohibited purchase is required to reimburse the Department for the amount spent on the purchase. If a recipient knowingly makes a second prohibited purchase within three years of the first prohibited purchase, the recipient is disqualified from the direct cash assistance program for a period of sixty days. If a recipient makes a third prohibited purchase within three years of the first prohibited purchase, the recipient is disqualified from the program permanently.

The Department is required to assist store owners in maintaining policies and practices to prevent direct cash assistance from being used in any EBT transactions at specified establishments. The Department is required to develop a sign specifying the Department's fraud hotline and to make the sign available on the Department's website. A person who is subject to a penalty may appeal the action to the Commissioner of Human Services within five business days of receipt of the notice of violation. The Department is required to conduct an administrative hearing pursuant to the Uniform Administrative Procedures Act within 15 business days of receipt of the appeal and to render a decision within 7 days of the conclusion of the hearing. The Department is required

to report in writing the results of implementation of the legislation, specifically the effectiveness and efficiency of training and the posting of appropriate signs, to the Senate Health and Welfare Committee and the Health Committee of the House of Representatives on or before January 15, 2015.

ESTIMATED FISCAL IMPACT:

Increase State Revenue - \$205,900/FY14-15

\$197,100/FY15-16 and Subsequent Years

Increase State Expenditures - \$22,400/One-Time

\$379,300/Recurring

Other Fiscal Impact – Civil penalties will be collected as a result of violations by persons and business entities. It is unknown how many violations may occur and how much the increase in state revenue will be future fiscal years.

Implementation of this bill could jeopardize \$9,576,200 in federal funds. According to the Department of Human Services (DHS), the restrictions on assistance spending and EBT transactions in the proposed legislation are broader in scope than the federal restrictions enacted by the Middle Class Tax Relief and Job Creation Act of 2012. According to the DHS, under 42 U.S.C. § 609 the Department of Health and Human Services (HHS) will impose a five percent penalty on the state family assistance grant if the state is in violation of federal law. According to the HHS website, the penalty will be imposed on the fiscal year following a final decision by HHS.

Assumptions:

- Although the term “food stamp benefits” is defined in the bill, it is assumed that the bill applies to assistance provided through the Temporary Assistance for Needy Families (TANF) program because the term is not used again in the bill. According to the Department, application of the bill to Supplementary Nutrition Assistance Program (SNAP) benefits [food stamp benefits] would be inconsistent with federal law.
- The source of Department approved training is not identified in the bill. It is assumed that the Department will provide the training.
- According to the Department, the number of appeals heard by the Appeals and Hearings Division will increase slightly due to alleged violations of the provisions prohibiting the use of funds for certain purchases and the withdrawal or use of funds at specified locations. According to the Department, no additional employees will be required for appeal processing.
- The Department contracts with an outside vendor for EBT services. EBT transactions will be blocked from ATMs and point of sale (POS) terminals at prohibited locations by the vendor. Initial setup and installation of a blocking system will result in a one-time expenditure of approximately \$4,800 (40 hours x \$120 per hour rate).

- According to the Department, Supplemental Nutrition Assistance Program (SNAP) and cash transactions flow through the same system. To block only cash transactions, all transactions must be examined individually. To block only cash transactions will cost \$.12 per cost per case month. The resulting increase in expenditures for blocking only cash transactions per year is estimated by the Department to be \$73,200.
- According to the Department, ongoing monthly research and support is estimated to cost \$10,800 [(10 hours per month x 12 months) x \$90 per hour rate]. The total resulting increase in recurring expenditures for blocking only cash EBT transactions through the vendor is estimated to be \$84,000 per year (\$73,200 + \$10,800).
- According to the Department, the Investigation Division will need one full-time employee to build, maintain, and update the blocked terminal list and to assist ATM owners and retailers resulting in a recurring increase in state expenditures of \$69,100 (\$36,400 salary and taxes + \$11,100 benefits + \$21,600 for office space, communications, networking, travel, postage, and supplies) and a one-time increase in state expenditures of \$4,400 (\$3,300 office landscaping + \$200 wiring + \$900 computer/printer.)
- According to the Department, the Investigation Division will need one part-time employee to assist with appeals and hearings related to blocked ATMs and POS terminals resulting in a recurring increase in state expenditures of \$29,100 (\$22,500 salary + \$6,600 for communications, networking, travel, postage, and supplies) and a one-time increase in state expenditures of \$4,400 (\$3,300 office landscaping + \$200 wiring + \$900 computer/printer).
- According to the Department, the Department will need two full-time employees to provide training to employees required by the bill to be certified to accept EBT card purchases resulting in a recurring increase in state expenditures of \$197,100 [2 x (\$49,000 salary and taxes + \$13,400 benefits + \$36,150 for office space, communications, networking, travel, postage, and supplies) and a one-time increase in state expenditures of \$8,800 [2 x (\$3,300 office landscaping + \$200 wiring + \$900 computer/printer)].
- The Department will recover the expenditures related to the two full-time employees providing training from training fees imposed on employers or employees pursuant to the provision in the bill requiring employers or employees to pay for the training provided by the Department. The total increase in state revenue from training will be \$205,900 in FY14-15 and \$197,100 in FY15-16 and thereafter.
- The total recurring increase in state expenditures to the Department is estimated to be \$379,300 (\$84,000 computer programming and maintenance + \$69,100 full-time investigation employee + \$29,100 part-time investigation employee + \$197,100 full-time training employees).
- The total one-time increase in state expenditures to the Department is estimated to be \$22,400 (\$4,800 computer programming + \$4,400 full-time investigation employee + \$4,400 part-time investigation employee + \$8,800 full-time training employees).
- The Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96) requires states to prevent the use of TANF assistance in EBT transactions at specified locations (liquor stores, casinos and gaming establishments, and retail establishments providing adult-oriented entertainment). A state that fails to implement and maintain policies and

practices necessary to prevent prohibited transactions will be penalized an amount equal to five percent of the state family assistance grant.

- According to the Department, the restrictions on assistance spending and EBT transactions in the proposed legislation are broader in scope than the federal restrictions enacted by the Middle Class Tax Relief and Job Creation Act of 2012. 45 C.F.R. § 234.11 prohibits restrictions on the use of individual assistance. According to the Department, this federal regulation effectively prohibits any state law that imposes restrictions beyond those authorized under federal law.
- According to the Department, under 42 U.S.C. § 609 the Department of Health and Human Services (HHS) will impose a five percent penalty on the state family assistance grant if the state is in violation of federal law. The fiscal year 2012 TANF Block Grant was \$191,523,800. If HHS imposed a five percent penalty, the state would be in jeopardy of losing \$9,576,190 in federal funds ($\$191,523,800 \times 0.05$).

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read 'Lucian D. Geise'.

Lucian D. Geise, Executive Director

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